

COPY

March 8, 1955

Adelard E. Cote, Labor Commissioner  
Department of Labor  
Pleasant Street  
Concord, New Hampshire

SEP 22 1993

CONCORD NH

Dear Mr. Cote:

This is in response to your letter of February 14 in which you asked whether Revised Laws, chapter 214, would apply to resurfacing projects conducted by the Department of Public Works and Highways. You state that four requests for wage rates have been received from the Department with respect to four such projects contemplated in various cities and towns through the state. It is planned to let all four jobs under one contract.

A determination of this question requires a clear understanding of the nature of the work to be performed. This is not specified in your letter. These projects have been discussed with John Noble of the Highway Department. It is my understanding from the discussion with Mr. Noble that these jobs involve applying an entirely new surface to considerable stretches of highway. In answering your letter I assume that such is the case.

Section 6 of chapter 214 provides as follows:

"6. Definitions. Whenever used in sections one to five inclusive, the words 'construction and constructed' as applied to public works, shall include additions to and alterations of public works."

This section indicates legislative intention that application of the statute should not be restricted to original construction. The work in question would clearly appear to be of the nature contemplated by the statute.

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You have also inquired as to whether a resurfacing project let as a package, including work in Durham, New Castle, Rye, Portsmouth, North Hampton, Exeter, Candia, Auburn, Hooksett, Weare, Henniker, Hopkinton, Concord, Bow, Dunbarton, Brookline, Hollis and Nashua should be subject to a single set of rates based upon the highest prevailing rate in any of the towns included.

The statute (R.L., c. 214, s. 1) contemplates that one set of rates shall be set on a public work. The rates shall not be less than the wages paid in the included town paying the highest rate, whether by municipal contract, or by collective bargaining contract or by comparison to wages paid to employees in the same trade or occupation by private employers in the included town engaged in the construction industry.

It would be entirely possible for a single contract awarded by the Highway Department to include more than one public work. In such event a separate set of rates must be furnished for each included public work.

The determination of whether a single contract includes more than one public work is essentially one of fact to be determined by you. In making this determination you should view the problem as follows: Would an ordinary person consider the work being performed as one job or as a series of separate jobs? Any number of factors could be taken into consideration, viz: whether all of the resurfacing is being done on one highway. If so, the proximity of one stretch of new surface to the next stretch. While it would not appear to be absolutely essential to inclusion in a single public work that the resurfacing be contiguous, certainly the proximity of the various jobs should be considered.

No set of rules can be given in this situation and sound judgment is the best guide in making this determination in conformity with the foregoing principles.

Sincerely,

Louis C. Wyman  
Attorney General

ETB/aml